

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4230 of 2009

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Umesh Rajbanshi Son of late Kapildeo Rajbanshi,
Resident of village- Jharain, P.S.-Nawada, District-
Nawada.

.... . Petitioner

Versus

1. The State of Bihar
2. The Collector, Nawada.
3. The Deputy Collector, Land Reform, Nawada.
4. Circle Officer, Nawada Sadar, District Nawada.
5. Circle Inspector, Nawada Sadar, Block, Nawada.
6. Yashoda Devi W/o late Hari Ram, Resident of
village - Jarain, P.S. Nawada, District - Nawada.

.... . Respondents

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Appearance :

For the Petitioner/s: Mr. Surendra Kishore Thakur
Mr. Satya Prakash Prasar
Mr. Krishnadeo Raj

For the Respondent/s: Mr. Dinbandhu Singh (Gp9)
Mr. Hemendra Prasad Singh, Sr. Adv.
Mr. Lal Bahadur Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

7. 24-06-2015

Heard Sri Surendra Kishore Thakur,
learned counsel for the petitioner, Sri
Dinbandhu Singh, learned Govt. Pleader - 9 as
well as Sri Hemendra Prasad Singh, learned
senior counsel, assisted by Sri Lal Bahadur
Singh, learned counsel, who has appeared on
behalf of respondent no. 6.

The petitioner, invoking writ
jurisdiction of this Court under Article 226 of
the Constitution of India, has prayed for
quashing of an order dated 08-08-2008 passed in

Case No. 94(R) of 2007/23(R) of 2008 by the District Magistrate, Nawada. By the said order, the learned Collector has set aside the order of the D.C.L.R., Nawada as well as order passed by the Circle Officer, Nawada.

Short fact of the case is that the petitioner on the basis of sada will approached the Circle Officer for mutating the land pertaining to Khata No. - 100 & 101, which includes all the plots of the said khata, situated in village Jharain in the district of Nawada. The Circle Officer allowed the mutation case. After noticing the fact regarding the order passed by the Circle Officer, the respondent no. 6, who is widow of uncle of the petitioner, approached the D.C.L.R., Nawada by filing an appeal, vide Appeal Case No. 04 of 2006-07, however, her appeal was dismissed. Thereafter, she approached the revisional authority i.e. Collector and the learned Collector by the impugned order has set aside the order of mutation primarily on the ground that before passing order of mutation, notice was not validly served on the respondent no. 6



and secondly, the learned Collector, after examining certain records, concluded that the said will was not genuine and as such, the revision was allowed on 08-08-2008, which has been assailed by the petitioner in the present writ petition.

Learned counsel for the petitioner, while assailing the order of the learned Collector, has firstly argued that it was not within the jurisdiction of the Collector to adjudicate on the correctness of the will. He submits that such dispute was required to be settled by the court of competent jurisdiction, not by the Collector. He further tried to persuade the Court that in mutation case, notice was validly issued and despite service of notice, the respondent no. 6 had preferred not to appear and as such, order of mutation is not an ex-parte order.

Sri Hemendra Pd. Singh, learned senior counsel for respondent no. 6, opposing the prayer of the petitioner, submits that both the orders i.e. order of the Circle Officer as well as the appellate authority i.e. D.C.L.R. were



totally illegal and not sustainable in the eye of law. He submits that a sada will, which was not confirmed in a probate proceeding, was not at all required to be looked into, whereas, the Circle Officer on the basis of such sada will had entertained the mutation case and allowed the same, which was affirmed by the D.C.L.R. He further submits that it is an admitted case that land in dispute was ancestral property and as such, if for the time being it is assumed that will was executed by the husband of the respondent no. 6 that was not required to be given effect without the consent of the wife and their three daughters. He further submits that the revisional authority after examining the record has concluded that notice was not at all validly served on respondent no. 6 and as such, any order passed behind back of the party is required to be set aside, keeping in view the fact that same order is considered as an order violating the principle of natural justice.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The Court is of the



opinion that while deciding the present dispute, it would not be appropriate to record any finding on the point of genuineness of the said will. These matters are required to be examined by the court of competent jurisdiction. However, the Court is of the opinion that in absence of valid service of notice, the Circle Officer was not justified in allowing the mutation case filed by the petitioner. The Court is of the considered opinion that both the orders i.e. order passed by the Circle Officer as well as the D.C.L.R. are not sustainable in the eye of law. Similarly, the Court does not appreciate the approach of the revisional authority, whereby, a finding has been recorded on the genuineness of the will. Such thing is required to be examined by the court of competent jurisdiction. On the basis of such irregularities, the order of the Collector is required to be interfered with. However, keeping in view the fact that orders passed by the Circle Officer as well as the D.C.L.R. were not in accordance with law, if this Court set aside the order of the Collector, it will amount to

revival of two illegal orders and as such, this Court is refraining to pass any positive order in respect of the impugned order.

The writ petition stands disposed of with an indication that if the parties are so advised, they may approach the Circle Officer for mutation and if such petition is filed, the Circle Officer, without being prejudiced with this order, after hearing the parties, may pass appropriate order in accordance with law.

(Rakesh Kumar, J.)

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